

REMARKS

Claims 1-8 and 39-61 are currently pending in the subject application and are presently under consideration. Claims 1-8, 39-47, 51, and 52 have been amended to correct minor informalities or to further emphasize various distinguishing features. A version of all pending claims can be found at pages 2-9 of this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objection to Claims 1-8, 39 and 43 Under 35 U.S.C. §112

Claims 1-8, 39, and 43 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This objection should be withdrawn for at least the following reasons. Claims 1-8, 39, and 43, as amended particularly point out and distinctly claim suitable subject matter.

In particular, in accordance with the Examiner's suggestions facial amendments have been applied to the claims to at least remedy the issues noted by the Examiner at page 2 of the Office Action (dated July 2, 2009). Accordingly, this objection should be withdrawn.

II. Rejection of Claims 1-8 and 39-58 Under 35 U.S.C. §103(a)

Claims 1-8 and 39-58 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Fraser (US 5,664,115) in view of Halbert, *et al.* (US 6,101,484, hereinafter referred to as "Halbert"). Withdrawal of this rejection is respectfully requested for at least the following reasons. Neither Fraser nor Halbert, either alone or when combined, disclose or suggest all claimed elements.

A rationale to support a conclusion that a claim would have been obvious is that *all the claimed elements were known in the prior art* and one skilled in the art could have combined the elements as claimed *by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art.* *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1395 (2007).

The disclosed subject matter relates to multiple criterion buying and selling mechanisms that can match criteria input by a buyer with criteria input by a seller in order to output to the buyer (in real time) a list of seller defined deals that match or correlate with the criteria defined by the buyer. (*See e.g.*, pg. 7, line 28 – pg. 8, line 10; pg. line 26 – pg. 12, line 21; FIGS. 4a-4c). While deals are correlated by matching criteria between a buyer and seller, both parties can define their own criteria (*see* page 11, lines 4-7; page 16, lines 15-21; FIG. 4a, element 160; FIG. 8b, element 303). Hence, it is possible that buyers define criteria sellers had not contemplated, yet matching can still be performed (e.g., on selected criteria). Moreover, the seller can be notified of buying criteria that does not match the seller criteria (*see e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15). Thus, sellers are afforded a convenient and powerful mechanism to gain insight into what criteria is important to buyers, of which the sellers may not have listed in their own criteria, or even be aware it would be of interest to buyers. For example, if buyers often list a warranty in their buying criteria, then the seller might be able to make more sales by including warranty information in the seller criteria and/or improving the standard warranty to solicit more buyers, since the seller now knows this feature is often important to buyers buying the product. In particular, independent claim 51 recites, “providing the potential seller with **buyer criteria** that fail to match any **seller criteria** input by the potential seller.” Similarly, independent claim 1 recites, “notifying the seller of the at least one of a product or service when the **buying criteria** does not match the **seller criteria**,” independent claim 40 recites, “alerting the at least one seller of the at least one good or service when **at least one buyer criterion** of the plurality of price and non-price buying criteria fails to match **any portion of the plurality of price and non-price selling criteria**,” independent claim 50 recites, “informing the seller when **buying criteria** does not match **selling criteria**,” and independent claim 52 recites, “reporting to a seller of the particular good or service **buyer criteria** that does not match **seller criteria**.” The cited art, taken individually or when combined, does not disclose or suggest these features.

To facilitate a clearer understanding of the disclosed subject matter, applicant’s representatives offer the following definitions recited in, *inter alia*, independent claim 51:

- ***Seller criteria*** – defines “characteristics or qualities of a particular good or service offered by a respective potential seller.” Thus, seller criteria can be input by the seller and can be, e.g., price, shipping address, warranty, tolerances, purity or the like associated with the item the seller desires to sell.
- ***Offer criteria*** – a “value or range of respective seller criteria.” Thus, if seller criteria is, say, price, then offer criteria can be, e.g., \$5 (e.g., the actual value of price – note: “\$5” is materially distinct from “price” as an attribute/characteristic), whereas if seller criteria is, e.g., purity, then offer criteria can be, e.g., 95% - 99% pure (e.g., the actual value or range for purity) in connection with the item the seller desires to sell.
- ***Buyer criteria*** – “input by the potential buyer and defining characteristics or qualities of the particular good or service sought by the potential buyer and not available for selection from amongst the seller criteria.” Hence, buyer criteria can be, e.g., price, shipping address, warranty, tolerances, purity or the like associated with the caveat that buyer criteria is typically a feature not defined by any seller (e.g., seller criteria) for this particular item, otherwise, the buyer could simply select (e.g., from a drop down list generated from the aggregate data from all sellers) the criteria rather than input it.
- ***Order criteria*** – defines “a value or range associated with either the seller criteria or the buyer criteria.” Thus, order criteria can be, e.g., \$5 if the seller criteria is price, or can be, e.g., 1 year parts and labor if the buyer criteria is warranty.

With the above in mind, it is readily apparent that neither of the cited references disclose or suggest “providing the potential seller with ***buyer criteria*** that fail to match any ***seller criteria*** input by the potential seller” as recited in independent claims 51 or similarly claims 1, 40, 50, and 52. In other words, the references do not relate to providing the seller an indication of characteristics or qualities of the particular good or service sought by the potential buyer (e.g., buyer criteria) that is not included in the seller criteria.

At page 3 of the Office Action, the above is conceded with respect to Fraser, which relates to obtaining buyer profile information associated with potential buyers and selectively displaying property listings to potential buyers based upon the profile information. However, it is argued that Halbert can remedy these deficiencies with respect to Fraser.

Unlike Fraser, which relates to transactions in connection with unique items (real estate

properties), Halbert relates to creating a co-op for aggregating demand for multiple identical items from the same seller in order to obtain a lower cost for the buyers. Fraser discloses that a buyer specifies that maximum price at which he is willing to purchase the product (col. 9, ll. 11-12). If the maximum price is below a minimum threshold of a current price curve, the buyer is not guaranteed to receive the product in the current pool, but the offer is recorded (col. 9, ll. 21-23). Based upon these offers below the minimum threshold, the seller can adjust the minimum threshold in a “what-if” scenario to determine if a greater profit can be captured based upon higher volume but lower profit per unit (col. 8, ll. 28-39).

Hence, Halbert does disclose certain information input by buyers being provided to sellers. Specifically, price *values* are provided to the seller. However, as such relates to the claims, actual price *values* are defined as *order criteria*, not *buyer criteria*. Thus, at the very most, Halbert can be said to provide the potential seller with *order criteria* input by the buyer that fail to match any *offer criteria* input by the potential seller, whereas claim 51 recites, “providing the potential seller with *buyer criteria* that fail to match any *seller criteria* input by the potential seller.”

In other words, the feedback to sellers provided by Halbert is in the form of actual price values, whereas feedback provided according to the disclosed subject matter is markedly distinct from actual values and is instead directed to characteristics or qualities of the item irrespective of what the actual values for those characteristics or qualities is. For example, while Halbert can inform a seller that there are many potential buyers desiring the item at a price of \$5 dollars per unit, Halbert is incapable of informing the seller that buyers are interested in a characteristic labeled or defined (in this case) as price because Halbert includes no mechanism to discern such data from buyers. Moreover, independent claim 51 also recites, buyer criteria is “not available for selection from amongst the seller criteria.” Thus, to argue that Halbert’s feedback of price points is indeed buyer criteria (rather than order criteria) requires the rejection analysis to acknowledge that the seller offered the product without any specification of price at all, thus, no ability by buyers to even input a price. In fact, Halbert clearly teaches such is not a germane argument, requiring instead for the seller to input a price curve as part of the “essential properties that define each co-op” (col. 7, ll. 36-44). It is therefore self-evident that price points of Halbert cannot represent *buyer criteria* and at most can only represent *order criteria*.

As a result, no art of reference discloses “providing the potential seller with *buyer*

criteria that fail to match any *seller criteria* input by the potential seller.” Accordingly, this rejection should be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063[GEDP106US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants’ undersigned representative at the telephone number below.

Respectfully submitted,
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